



September 17, 2009

Jennifer J. Johnson, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551.

RE: Docket No. R-1364.

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the Federal Reserve Board's interim final rule implementing the *Credit Card Accountability, Responsibility and Disclosure Act* (CARD Act).

The provisions of the CARD Act covered by this interim rule include the 21-day notice requirement, the 45-day notice requirement for changes in terms and the related notice requirement regarding the consumer's right to reject those changes. While NAFCU generally supports the intent behind the CARD Act, we are extremely concerned with the 21 day notice provision as it applies to all open-end credit plans. It is our understanding that Congress intended to apply this provision only to credit cards and not to all open-end credit plans. Accordingly, NAFCU requests that the Board use its authority under sections 104 or 105 of the Truth in Lending Act (TILA) to exempt open-end transaction, with the exception of credit cards, from the coverage of the regulation.

Section 104 Exemption

Section 104 authorizes the Board to exempt transactions that are "not necessary to carry out the purposes of" TILA. Applying the 21-day notice provision to open-end transactions such as automobile loans, signature loans or other similar transactions is not necessary to further the purposes of TILA. Section 102 of TILA states that the statute's purpose is to ensure the informed use of credit through adequate disclosure of meaningful terms, and the costs associated with credit. There is little evidence, however, to indicate that consumers will benefit in any meaningful way by applying the 21-day notice requirement to loans with fixed payments and a reoccurring due date. In fact, quite the opposite, the rule will likely cause confusion.

Lenders generally have only two options for complying with the 21-day rule. First, the lender may simply send a notice in the mail at least 21 days before the due date for each loan. Sending due dates for every loan, however, is very costly. Credit unions, in particular, would feel the strain of those costs as a fair percentage of the industry uses combined statements which include checking and savings account information, as well as loan payment information all in one simple document. More importantly, this option will almost certainly cause confusion for many borrowers who do not understand why they are receiving several statements each month, instead of the single consolidated statement to which they have grown accustomed. While sending out new disclosures for each loan will be costly and potentially confusing for members, many credit unions have chosen that route as they believe keeping the current due date is the least burdensome solution for the membership.

The second option is to push back due dates towards the end of the month. This will enable the institution to continue providing statements at the beginning of each month, as is the current practice, without running afoul of the 21-day notice requirement. Regardless of what option credit unions choose for current accounts, very few institutions plan to continue allowing borrowers to pick their own due dates in the future.

While moving back due dates is one of only two viable options under the rule as it exists, this practice will likely harm consumers more than it helps. First, consumers invariably appreciate being able to choose their own due dates. For many consumers this is a mere luxury. However, others who live paycheck to paycheck, plan their payments accordingly; paying their known expenses first, then spending what remains. Ideally, moving back the due date would have no impact as it does not affect the consumer's salary or expenses. Nonetheless, it is a certainty that some consumers who do live paycheck to paycheck and who get paid towards the beginning of the month will end up having not quite enough to pay all of their bills if every loan they have is due at the end of the month.

Additionally, credit unions will almost certainly eliminate the practice of allowing weekly or bi-weekly due dates as it would be extremely onerous to provide the 21 day disclosures on loans that are due every 7 or 14 days. Weekly and bi-weekly due dates are, of course, beneficial to consumers as they are a useful tool in budgeting. Further, weekly and bi-weekly due dates decrease the overall cost of the loan.

NAFCU does not have any issue with the rule as it applies to credit cards. In fact, many credit unions previously provided 21 days notice. However, the new rule provides little if any benefit in the context of automobile loans, signature loans or other open-end credit where the payment and the due date do not vary from month to month.

In sum, many consumers will no longer receive a consolidated statement from their credit union with all of their relevant account information, and they are likely to experience at least some confusion over the change in the statement process. Many consumers will see their due dates moved back for reasons they don't understand. Weekly and bi-weekly due dates will become a thing of the past. Finally, future borrowers will likely not have the opportunity to choose their own due dates. What's worse, this will come to pass despite the fact that Congress has acknowledged it only intended the 21-day notice requirement to apply to credit cards. It is difficult to see how the provision will improve the informed use of credit. Quite the contrary, the

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evidence indicates this provision, when applied to all open-end plans, will confuse consumers, while eliminating useful financial planning tools. Given that there are few if any advantages to be gained, it is clear the costs greatly outweigh the benefits.

Section 105 Exemption

The Board would also be justified in exempting non credit card transactions from the 21 day notice rule under section 105 of TILA. Under this section, the Board may exempt transactions after considering: (1) whether the provisions provide a benefit to the consumer; (2) the extent to which the requirements would complicate or increase the cost of the transaction; (3) the status of the borrower; (4) whether the loan is secured by the consumer's principal residence; and (5) whether an exemption would undermine consumer protection. Nearly all of the factors the Board must consider weigh heavily in favor of providing an exemption, and applying the provision only to credit cards.

The 21-day notice, if applied to all open-end credit plans provides little benefit to consumers. Again, let me stress that NAFCU is not concerned with the provision as it applies to credit card accounts. However, for all the reasons mentioned above, applying the provision to open-end plans with fixed payments and the same reoccurring due date will not provide any benefit to consumers. Quite the opposite, the provision will ultimately cause confusion and limit payment options.

The requirement will complicate and increase the cost of the transaction. In the short term the provision will undoubtedly complicate the transaction as consumers will almost certainly wonder why due dates are being pushed back. Additionally, most consumers will not understand why they will receive multiple statements from their credit union where before they received a single consolidated statement.

Further, the provision has proven incredibly complicated for financial institutions and also quite costly. As already discussed above, credit unions first had to decide whether to push back due dates to the end of the month or keep the due dates as is. Once that determination is made, a number of other time consuming and costly adjustments must be made. For credit unions that pushed back due dates, disclosures must be provided to members to notify them of the new due date. Moreover, credit unions are expecting to spend a considerable amount of staff time responding to questions about why the due date was pushed back.

Additionally, the 21 day notice requirement will have two significant operational effects on credit unions that choose to move payments towards the end of each month. First, lenders previously were able to rely on a more-or-less steady stream of loan income throughout the month. With open-end loan income only arriving at the end of the month, operational changes will likely be necessary to accommodate the fact that there will be, relatively speaking, very little loan income during the rest of the month.

Second, all payments will be due the same day, or at the very least, within just a few days. This will put a tremendous strain on payment processing as every open-end loan in the lender's portfolio will need to be processed and posted to the customer's account in short order. This will, in turn, create serious staffing issues. Currently, most credit unions process

transactions in one of two ways. Some credit unions have a dedicated staff for processing payments. Most credit unions, however, employ a two pronged approach for processing transactions. These credit unions have a small number of staff dedicated to processing; however, that staff is augmented by tellers who also process payments during down time between customers. Regardless of which approach a credit union uses, grouping all open-end loan payments at the end of the month will cause serious staffing problems. A full time staff for processing transactions will likely no longer be necessary as each month will feature a short period full of activity, followed by a long period with very few payments to process. Likewise, tellers will no longer be able to augment the process throughout the month as the sheer number of payments coming in at the end of each month will require a dedicated staff for a very short period of time. Even institutions that choose to keep the existing due dates for current loans will eventually face this same problem as the due date for all new open-end loans will likely be set towards the end of the month to simplify compliance with the 21 day requirement.

Credit unions that choose not to move due dates also face several complicated and costly issues. First and foremost, the credit union must now oversee the printing and mailing of statements on a month long basis, whereas before consolidated statements were mailed at the beginning of each month. This, of course, will result in higher printing and mailing costs. Regardless of which option a credit union chooses, the provision will require software changes which, in most cases, are executed through a third party vendor. Software changes are always relatively expensive. The cost is compounded by the fact that there have been several changes to Regulation Z over the last year and several more changes expected in the near future. Consequently, costs for reconfiguring software are soaring.

The next step the Board is required to examine is the potential impact of an exemption on the status of the borrower. In examining this factor, the Board is charged with studying any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction and the importance to the borrower of the credit, related supporting property, and coverage under TILA. This factor does not seem to weigh heavily in either direction. However, to the extent that the rule effectively encourages institutions to move back all open-end due dates to the end of the month, it may in fact have a very detrimental impact on the borrower's other financial arrangements as it eliminates a useful financial planning tool.

The final interim rule already exempts home equity lines of credit (HELOCs) from its application. Consequently, there are virtually no open-end loans secured by the consumer's residence which would be impacted by granting the exemption. Thus this factor weighs in favor of the exemption, or, at the very least, is neutral.

Finally, an exemption would not undermine consumer protection. Consumers would still receive the longer 21-day notice for credit card accounts, which is the apparent purpose of the provision. Moreover, consumers would be able to carry on paying their other open-end loans as is. Given that the vast majority of these plans have the same fixed payment and the same reoccurring due dates every month, there is little, if any, benefit to the longer notice period. This is particularly true for consumers who use auto bill pay options at the time funds are disbursed so that the bill is paid automatically every month. For the vast majority of people who pay for loans using an automatic debit process, the advance notice provided each month is essentially useless.

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In closing, NAFCU urges the Board to use its authority under sections 104 or 105 of TILA to exempt open-end credit plans – other than credit card accounts – from the coverage of the 21-day notice requirement. NAFCU appreciates this opportunity to share its comments on the proposed guidelines. Should you have any questions or require additional information please feel free to call Dillon Shea, NAFCU's Associate Director of Regulatory Affairs at (703) 842-2212.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred R. Becker, Jr.", written in a cursive style.

Fred R. Becker, Jr.
President/CEO